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CLERK OF THE COURT

No. 02-1108

IN THE
Supreme Court of the United States

DEANNA C. WILLSON,

Petitioner,

v.

CATHOLIC CHARITIES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO KANSAS COURT OF APPEALS

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Petitioner's designation of parties warrants mention. She designated "Catholic Charities Adoption Agency" and "M. Bauer" as Respondents in this matter. However, Catholic Charities, Inc. is the only proper Respondent. Mr. Bauer is the attorney who represented Catholic Charities, Inc., before the Kansas Court of Appeals and the Kansas Supreme Court. He was not a party to any of the proceedings below and is not properly a Respondent before this Court. In addition, Mark L. and Sarah C. Burenheide, although not designated as Respondents in this matter and not parties below, are the adoptive parents with whom the baby has lived since shortly after her birth in December of 2000.

Catholic Charities, Inc., is a non-governmental corporation pursuant to United States Supreme Court Rule 29.6. It is a not-for-profit corporation organized under § 501(c)(3) of the Internal Revenue Code.

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REASONS FOR DENYING THE WRIT

The first question presented by the Petition is whether the trial court and the Kansas Court of Appeals applied the correct legal standard in deciding that Petitioner freely and voluntarily relinquished her parental rights and in affirming that judgment. The second question is whether the Kansas Court of Appeals properly found the Kansas Adoption and Relinquishment Act, K.S.A. 59-2111, *et seq.* to be constitutional. The Petition should be denied because the trial court and Kansas Court of Appeals applied the correct legal standard in reviewing Petitioner's attempt to revoke her relinquishment of parental rights and, in any event, the standard utilized was more favorable to Petitioner than is the standard she advocates. In addition, the Kansas Adoption and Relinquishment Act is constitutional and constitutes legislation properly within the authority of the State of Kansas and particularly inappropriate for federal oversight.

I.

PETITIONER HAS MISSTATED THE FACTS OF THIS CASE

Petitioner would have this Honorable Court believe that Respondent devised a scheme to steal her baby away from her and place the child for adoption. During trial, Petitioner attempted to prove that she was impaired by drugs at the time she relinquished her parental rights. The trial court not only rejected Petitioner's claims but found that her consent was freely and voluntarily given and that her challenge to its validity came only as the result of a change of heart.

At the time of her unplanned pregnancy, Petitioner was 29 years old and held a doctorate degree in pharmacy. She was already an unmarried mother raising a child and was seeking to establish a permanent relationship with that child's father. The birth father of Petitioner's son was not the same man who impregnated her in 2000 and he was unwilling to raise another man's child. Petitioner first contacted Respondent in May of 2000, shortly after learning she was pregnant. She requested information about adoption and parenting and Respondent's counselor provided this information to her.

In August of 2000, Petitioner executed a form with Respondent indicating her desire to develop an adoption plan, although the baby was not due until December. Also in August, Petitioner began speaking with prospective adoptive parents who were related to one of her friends, whom she had previously met and who were not clients of Respondent. Although Petitioner presented herself as definite in her adoption plan, both Respondent and the prospective adoptive parents encouraged her to consider other adoptive parents before moving forward. R. Vol. 8, p. 86; R. Vol. 7, pp. 107-108; R. Vol. 4, pp. 33-34. On August 28, 2000, after again being provided with a list of her options, Petitioner formally indicated her wish to place her baby for adoption through Respondent and to place the baby with the adoptive parents she had independently selected. Stipulation 15.

In September of 2000, approximately three months before the baby was due, Respondent's counselor gave Petitioner a copy of the legal adoption papers to take home and review. Nine days later, Petitioner met with an attorney who explained the legal effect of signing a relinquishment of parental rights in Kansas. Petitioner was advised that if

she relinquished her parental rights to Respondent, she could not change her mind later and revoke her action. She was also informed that under Kansas law, she need not be present in court when the adoption was finalized.

Petitioner's baby was born at 7:38 p.m. on December 20, 2000. She executed a relinquishment on December 22, 2000 at approximately 3:55 p.m., roughly 44 hours later. Stipulation 20 and 22; Appendix A at p. 42. The birth was uncomplicated and the baby was delivered vaginally. Stipulation 20; Appendix A at p. 37; Appendix B at p. 53. Following delivery, Petitioner took declining doses of Percocet. The last single pill she took before she signed the relinquishment was given at 11:55 a.m., exactly four hours before she executed the relinquishment. Appendix B at p. 53.

At the time she executed the relinquishment, none of the treating physicians, nurses, social workers or members of her support group detected any impairment of Petitioner's ability to understand what was occurring or to make decisions. Prior to signing the relinquishment, Respondent's counselor met with Petitioner and Petitioner articulated the factors involved in keeping the baby or placing her for adoption. Appendix B at pp. 51-53; R. Vol. 7, pp. 98-99; R. Vol. 8, pp. 65-68; R. Vol 5, p. 89. Petitioner indicated she was prepared to execute the relinquishment and never indicated she was not going to sign. Appendix B at p. 52; R. Vol. 5, p. 93. Before executing the relinquishment, Petitioner signed six other legal documents relating to herself and her infant. Appendix B at p. 52; R. Vol. 8, pp. 9-11.

Respondent's counselor then read key portions of the relinquishment to Petitioner and explained that the document

was important and involved giving up parental rights. R. Vol. 7, pp. 30-36; R. Vol. 8, pp. 11-13. Petitioner read the relinquishment herself and was able to explain that she understood it was permanent and that she was relinquishing her rights to the child. Appendix B at p. 52; R. Vol. 7, pp. 33 -36; R. Vol. 5, pp. 92. The notary public who was present for execution of the relinquishment asked Petitioner to swear that it was truthful, both before and after she signed the document. Appendix B at p. 52; Stipulation 22. Petitioner testified, "I knew that that paper meant that the adoption process was starting, that allowed the child to go home with [the adoptive parents]." R. Vol. 3, p. 68.

Petitioner was discharged from the hospital after signing the relinquishment. On the morning of December 23, 2000, Petitioner sent gifts for the baby to the adoptive parents. Late in the evening of December 23, 2000, Petitioner contacted Respondent and then the adoptive parents, indicating that she wanted the baby back and that she was doing "terrible." Appendix B at p. 54; Stipulation 29. Petitioner solicited the birth father's support but he allowed his parental rights to be terminated. Petitioner filed a Petition to Set Aside Relinquishment following termination of the birth father's parental rights on January 29, 2001. R. Vol. 1, pp. 12-14, 17-19. Following a trial, the district court found that Petitioner failed to meet her burden of proof and that the evidence presented established that she "signed the relinquishment on December 22, 2000, freely, voluntarily and with full knowledge of its effect which terminated her rights to her child." Appendix B at p. 55.

The Kansas Court of Appeals affirmed the trial court and rejected Petitioner's newly raised constitutional challenges as being factually and legally unsupported. Appendix A. The Kansas Supreme Court denied review on June 13, 2002.

II.

THE TRIAL COURT AND THE KANSAS COURT OF APPEALS APPLIED THE PROPER LEGAL STANDARD IN ANALYZING PETITIONER'S HIGHLY FACT-INTENSIVE CHALLENGE

Petitioner contends that the trial court and the Kansas Court of Appeals applied the wrong legal standard in considering her challenge. She argues that a relinquishment executed pursuant to K.S.A. 59-2124(a) must be accepted by the agency in writing in order to be effective. (Pet. for Review at p. 2.) Because Respondent's agent executed the relinquishment 11 days after Petitioner attempted to revoke it, Petitioner reasons that she was entitled to return of the child. According to Petitioner, the Kansas Court of Appeals erred by misinterpreting the law and confusing the legal requirements regarding consents and relinquishments. (Pet. for Review at pp. 1, 4.) It is Petitioner, however, whose legal analysis is in error.

It is true that the Kansas Adoption and Relinquishment Act recognizes a distinction between a consent and a relinquishment. Pursuant to K.S.A. 59-2124, the relinquishment statute, once a parent has relinquished a child to an agency, the agency possess all the rights of a legal guardian and can place the child for adoption and give its consent thereto. K.S.A. 59-2124(a). The rights of the parent, on the other hand, are terminated, including the right to receive notice of a subsequent adoption proceeding. K.S.A. 59-2124(d). A relinquishment not accepted by the agency is the same as a consent.

A consent is final when executed, unless the consenting parent, prior to the final decree of adoption, alleges and proves by clear and convincing evidence that the consent

was not freely and voluntarily given. K.S.A. 59-2114(a). Under Kansas law, "clear and convincing" evidence relates to the quality of evidence presented, not the quantity. *See Ortega v. IBP, Inc.*, 255 Kan. 513, 523, 874 P.2d 1188 (1994). When a consent to adoption is properly acknowledged, the acknowledgment serves as *prima facie* proof of the validity of the consent, identity of the signor and that the written consent was freely and voluntarily given. *In re Adoption of Trent*, 229 Kan. 224, 624 P.2d 433 (1981). Absent fraud or duress, a consent constitutes a final waiver of parental rights. *In re Adoption of J.H.G.*, 254 Kan. 780, 869 P.2d 640 (1994). Under Kansas law, a valid consent to an adoption is a contract with the adoptive parents that the birth parent agrees to the termination of parental rights when the adoption is finalized. *Treiber v. Stong*, 5 Kan. App. 2d 392, 617 P.2d 114 (1980), *rev. denied*, 228 Kan. 807 (1980).

Because the trial court and Kansas Court of Appeals analyzed Petitioner's challenge to the validity of the relinquishment under the standard applicable to consents, Petitioner was afforded greater protection than had the relinquishment standard been utilized. She challenged the validity of her relinquishment and was given notice and the opportunity to present evidence at trial that her waiver of parental rights was not freely and voluntarily given. At the conclusion of the trial, the district court judge determined that Petitioner failed to meet her burden of demonstrating by clear and convincing evidence that her consent was not freely and voluntarily given. Appendix B at p. 55; Appendix A at p. 35.

On appeal, the Kansas Court of Appeals' role was to determine whether the findings of fact and conclusions of law below were supported by substantial competent evidence. *See In re Adoption of Baby Girl T*, 28 Kan. App. 2d 712, 717,

21 P.3d 581 (2001), *rev. denied*, 2001 Kan. LEXIS 422 (2001), *cert. denied*, 534 U.S. 976 (2001). The appellate court's function was not to reweigh the evidence or test the credibility of witnesses but to determine whether there was evidence supporting the trial court's findings. *In re Adoption of Baby Boy Irons*, 235 Kan. 540, 550, 684 P.2d 332 (1984); Appendix A at p. 37.

The Kansas Court of Appeals correctly found that Petitioner's attempt to revoke the relinquishment was ineffective. "A relinquishment is not an offer that can be revoked before it is accepted as in a commercial transaction." Appendix A at p. 40. To the contrary, the Kansas Adoption and Relinquishment Act does not require simultaneous execution by birth mother and agency. *Id.*

In a similar vein, the Kansas Adoption and Relinquishment Act abrogated a line of cases permitting birth parents who had executed consents and then changed their minds to "race to the courthouse" and withdraw the consents prior to the consents being filed. *E.g.*, *In re Adoption of J.G.*, 10 Kan. App. 2d 483, 485, 702 P.2d 1385 (1985) (invalidating biological father's consent to adoption where he revoked consent before it was filed with district court). *In re J.G.* was decided under K.S.A. 59-2102, which required a consent to be filed of record. That statute was repealed in favor of statutory provisions which focus the court's attention on the voluntariness of consent rather than on compliance with procedural technicalities. Under the current law, K.S.A. 59-2114, the only statutory basis upon which an otherwise valid relinquishment can be voided is to prove that it was not freely and voluntarily given. Petitioner failed to carry her burden in this case. Appendix A at p. 40.

Petitioner has not identified any compelling reasons warranting review by this Honorable Court. Certiorari is rarely granted where the lower courts' factual findings constitute the claimed error. United States Supreme Court Rule 10. Petitioner, whose challenge is highly fact intensive, has not alleged, and cannot demonstrate, error rising to the level necessitating this Court's review.

III.

THE KANSAS ADOPTION AND RELINQUISHMENT ACT IS CONSTITUTIONAL

Petitioner challenges the constitutionality of the Kansas Adoption and Relinquishment Act on both due process and equal protection grounds. As discussed more fully below, the Kansas Act at issue affects neither Petitioner's right to due process nor her right to equal protection. The Act is constitutional.

As a preliminary matter, Respondent notes that the constitutionality of the Act at issue is a question of law. *See, e.g., Mills v. Habluetzel*, 456 U.S. 91 (1982) (holding Texas statute requiring suits to establish paternity of unmarried fathers be brought before child's first birthday unconstitutional and a violation of equal protection). As such, the scope of this Honorable Court's review is unlimited. *Id.* Under the well-known rules of law governing this Court's consideration, the Kansas Adoption and Relinquishment Act is presumed constitutional and will be upheld unless no reasonable construction will bring it into conformity with the Constitution of the United States. *McGowan v. Maryland*, 366 U.S. 420, 426 (1961).

A. The Rational Basis Test Applies

In *McGowan*, this Honorable Court declared that the Fourteenth Amendment allows the various states wide discretion in enacting laws which affect some groups of citizens differently than others. 366 U.S. at 425. The constitution is offended "only if the classification rests on grounds wholly irrelevant to the achievement of the State objective." *Id.* This so-called rational basis test applies where the affected group is not entitled to some level of heightened scrutiny, on the basis of racial or gender classifications, for example. *See Craig v. Boren*, 429 U.S. 190, 197 (1976) (employing heightened scrutiny to gender-based distinction).

Heightened scrutiny has also been applied to legislation affecting fundamental rights. *E.g.*, *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (applying heightened scrutiny to consideration of governmental interference with a parent's fundamental right to make decisions regarding care, custody and control of children, where parent was unwilling to relinquish parental rights). Such scrutiny, however, is not implicated in this matter. Petitioner's parental rights were terminated as a result of her own voluntary act, not because of any state action imposed upon her.

Moreover, the Kansas Adoption and Relinquishment Act passes constitutional muster even under heightened scrutiny. That standard asks whether the challenged legislation is substantially related to the achievement of an important governmental interest. *Craig*, 429 U.S. at 197. As the following sections demonstrate, the rights and restrictions provided by the Kansas Adoption and Relinquishment Act are substantially related to achieving Kansas' recognized public policy of stabilizing adoptions and protecting the rights of children and the expectations of prospective adoptive parents, once the adoption process has been initiated by the birth parent.

B. The Kansas Act Does Not Violate Petitioner's Right to Due Process

Petitioner claims the Kansas Adoption and Relinquishment Act violates her right to due process. It is unclear whether Petitioner's due process challenge is based upon a claimed lack of procedural due process or whether it is grounded in the theory that her substantive right to due process was violated. Either challenge must fail.

Petitioner received procedural due process because she was given notice and an opportunity to be heard prior to the termination of her parental rights. At the trial level, Respondent argued that Petitioner relinquished her rights to the child under Kansas law and therefore was not entitled to notice of the adoption proceeding. Respondent also objected to Petitioner's attempt to withdraw the relinquishment. The trial court, proceeding under the standards applicable to a consent for adoption under Kansas law, approved the notice Petitioner received and permitted her to challenge the validity of her waiver of parental rights. *See* Appendix A at p. 34. Thus, Petitioner arguably received more procedural process than she was due – but she certainly received no less. *Cf. Lehr v. Robertson*, 463 U.S. 248 (1983) (acknowledging that not all biological parents are entitled to notice of adoption proceedings and finding no due process violation where state law did not require notice to be given to biological father who failed to develop substantial relationship with child or to identify himself by registering with state's putative father registry).

Likewise, Petitioner's right to substantive due process was satisfied. It is true that the parent/child relationship is a fundamental liberty interest protected from state deprivation

by the Fourteenth Amendment to the United States Constitution. *Troxel*, 530 U.S. at 66-67; *In re Baby Girl T*, 28 Kan. App. 2d at 723. Unless a parent waives her rights, that liberty interest cannot be abrogated by the state absent a compelling interest. *See Santosky v. Kramer*, 455 U.S. 745, (1982); *In re Baby Girl T* at 723. "However, neither the Due Process nor the Equal Protection clauses prevent an individual from voluntarily relinquishing their legal rights and responsibilities to a child." *In re Baby Girl T* at 723. Petitioner's free and voluntary waiver of her parental rights and responsibilities does not implicate any liberty interest protected by the Fourteenth Amendment.

C. The Kansas Act Does Not Violate Petitioner's Right to Equal Protection

Petitioner claims that her right to equal protection was violated because: no scientific testing was utilized to determine and assure her competence at the time she executed the relinquishment documents but such methods are routinely employed in drunk driving cases; Kansas law does not give birth mothers a window of time in which to withdraw a voluntary waiver of parental rights but Kansas consumers have a "cooling off period" in which to cancel a door-to-door sales transaction; Petitioner has anecdotal evidence regarding another birth mother in Kansas whose child was returned to her when it was determined that her use of illicit drugs rendered her incompetent to freely and voluntarily relinquish her parental rights; and the adoption and relinquishment statutes of other states differ from the Kansas Act and allegedly afford birth mothers more protection than does Kansas. None of these allegations, even if accurate, raises equal protection concerns.

1. Petitioner's Reliance on Kansas Laws Pertaining to Drunk Driving and Consumer Protection is Misplaced

The cornerstone of equal protection analysis is that individuals who are similarly situated should receive the same treatment under the law. *Ross v. Moffitt*, 417 U.S. 600, 609 (1974). Equal protection is at issue where there is "disparity of treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Id.* This basic tenet of equal protection analysis demonstrates that Petitioner's reliance on Kansas law regulating drunk driving and consumer transactions is misplaced. The questions Petitioner asks this Court to entertain are whether she should have been subjected to scientific testing to determine her competence and whether she should have been able to revoke her consent later, regardless of her competence at the time she relinquished her parental rights. Respondent respectfully states that equal protection under the law does not mandate either occurrence.

Petitioner does not allege that her status as a birth mother is in any way relevant to that of drivers suspected of being under the influence of drugs or consumers wishing to cancel a sales transaction. In any event, she would be unable to make such a connection. Simply put, these three types of legislation regulate different conduct by different people for different purposes. Kansas' interest in utilizing scientific testing methods to deter, prosecute and convict drunk drivers is vastly different from any pretended interest Petitioner can formulate for the State to inject itself into the private decision of a birth mother to place a child for adoption. The State's interest is to enforce only those consents that are freely and voluntarily executed, but if so executed, the stability of the

child becomes paramount. *See In re Adoption of A.S.S.*, 21 Kan. App. 2d 714, 719, 907 P.2d 913 (1995). In the case at bar, there is substantial competent evidence Petitioner was competent at the time she relinquished her parental rights. Equal protection does not require the blanket imposition of competency, sanity and/or drug testing in the adoption arena.

Likewise, Kansas' interest in providing consumers a "cooling off" period to cancel a door-to-door sales transactions is irrelevant to its interest in regulating adoption. Although Petitioner's decision to place her child for adoption is undeniably a more important decision than whether to purchase goods from a door-to-door salesman, it is undisputed that Petitioner had months in which to make her decision. She decided to place her child for adoption, received and reviewed copies of the legal forms, consulted with an attorney and independently selected the adoptive parents long before her delivery date. She did not sign the relinquishment until almost 44 hours after the baby was born and could have waited longer or decided against signing at all if she had elected to do so. The fact is that Petitioner was not asked to make her mind up "on the spot," nor did she do so.

In order to pass constitutional muster, the Kansas Adoption and Relinquishment Act must be reasonably related to a legitimate governmental objective. *McGowan v. Maryland*, 366 U.S. 420, 425 (1961). The recognized objective and "strong public policy" behind the Kansas statutory scheme is to stabilize adoptions and prevent revocation of consent on a mere whim. *In re Irons*, 235 Kan. at 547. The Act provides rules guiding the conduct of the birth parent and adoptive parents as to when, and under what circumstances, a consent can be revoked. *Treiber*, 5 Kan. App. 2d at 396. In that way, the legitimate interest of the State of

Kansas in promoting stability for children is protected. *In re Irons*, 235 Kan. at 552. Under Kansas law, once a valid consent or relinquishment is executed, the rights of the child to stability and permanence take precedence over those of the birth mother. *See In re Adoption of A.S.S.*, 21 Kan. App. 2d 714, 719, 907 P.2d 913 (1995).

2. Petitioner's Reliance on Anecdotal Evidence Relating to The Alleged Incompetence of Another Kansas Birth Mother is Misplaced

Petitioner also offers an equal protection challenge based upon anecdotal evidence that a Kansas birth mother who used illicit drugs successfully challenged the validity of her consent to adoption. Respondent respectfully states that such information is inherently untrustworthy. In the absence of reported case law, this Court is being asked to accept Petitioner's recitation of the facts and her analysis that the situation is similar to her own. Even if the facts Petitioner offers are assumed to be accurate, she has made no showing that her right to equal protection has been impaired.

Apparently, the birth mother who used illicit drugs was able to prove by clear and convincing evidence that she was incompetent at the time she relinquished her parental rights. In contrast, Petitioner was unable to make this showing. Her failure came despite testifying as an expert pharmacist herself and producing another expert who rendered opinions regarding the effect of the medication on Petitioner's ability to validly consent to the adoption. The Kansas Court of Appeals found substantial competent evidence to support the trial court's factual findings that the birth was uncomplicated; Petitioner's last dose of medication was several hours before signing the relinquishment; and that Petitioner, who executed

the documents approximately 44 hours after giving birth, was competent and understood the consequences of her actions. At trial, these facts were more persuasive to the fact finder than Petitioner's unsubstantiated allegation that the medication rendered her incompetent.

3. Petitioner's Reliance on the Protections Allegedly Afforded by Other States' Adoption Statutes is Misplaced

Petitioner also discusses the protections allegedly afforded by the adoption laws of other states. Her argument is seemingly that the Kansas Adoption and Relinquishment Act violates equal protection because, as a Kansas birth mother attempting to revoke her consent to adoption, she is treated differently than are birth mothers in other states.

Even assuming, *arguendo*, that Petitioner is correct in her contention that the laws of some other states are more favorable to her situation than is Kansas law, she has not enunciated a valid equal protection claim. Merely identifying some differences among statutes of various states does not raise a constitutional issue. The salient question under equal protection analysis is whether Petitioner was discriminated against *vis a vis* other similarly situated residents of Kansas – not whether other states provide different statutory protections to their residents. Equal protection is violated if the State of Kansas impermissibly discriminates among different classes of people within its own boundaries.

The real question springing from the fact that states impose different laws regulating adoption is whether the state law in question (i.*e.*, Kansas law) meets the minimum standards required by the United States Constitution. The answer in this case is unequivocally that it does.

Moreover, the premise underlying Petitioner's analysis is faulty. She challenges the Kansas Act, in part, on the basis that some other states require more than 12 hours to elapse following the delivery of a baby before a birth mother can validly consent to placing the child for adoption.[1] Kansas' 12 hour provision was enacted to promote the State's interest in stabilizing adoptions for children while protecting birth mothers. *In re J.H.G.*, 254 Kan. at 789-790. Prior to enacting the 12 hour requirement, Kansas law did not mandate any waiting period at all. The legislative history demonstrates that the Kansas legislature considered but rejected a 24 hour waiting period. *Id.* Kansas law does not require a consent to be executed 12 hours after birth – it simply permits it. K.S.A. 59-2116. As Petitioner executed her relinquishment almost

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1. Respondent notes that Kansas law afforded Petitioner greater protection than she would have enjoyed in at least seven other states, which mandate no waiting period and require a high standard of proof to invalidate an adoption consent or relinquishment: **Idaho** Code § 16-1504 (no waiting period by implication; fraud, duress or undue influence required to revoke consent. *See Bernardi v. Steve B.D.*, 723 P.2d 829 (Idaho 1986)); **Indiana** Code § 31-19-9-2 and § 31-19-10-310-3 (permitting consent any time after birth and providing "best interest" of child test for revoking consent); **New York** CLS Domestic Relations Law § 115-b (no waiting period by implication and "best interest" of child test applied to revocation); **North Dakota** Century Code § 14-15-07 and § 14-15-08 (permitting consent any time after birth and allowing withdrawal of consent only upon showing of "best interest" of child); **Oklahoma** St. § 7503-2.2 and § 7503-2.7 (permitting consent any time after birth and requiring clear and convincing evidence of fraud or duress for revocation); **Oregon** Revised Statutes § 109.312 (no waiting period by implication and allowing irrevocable consent); **South Carolina** Code § 20-7-1700 (permitting consent any time after birth and requiring both "best interest" of child and finding of duress/coercion of birth mother); and **Wyoming** Stat. § 1-22-109 (permitting consent any time after birth and requiring showing of fraud or duress to invalidate consent).

44 hours after giving birth, the 12 hour issue is clearly a red herring. This Honorable Court has already denied review on this issue in *In re Baby Girl T*, cited *supra*, a case where the constitutionality of the 12 hour provision was directly at issue.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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